
HOUSE BILL 1198

State of Washington 60th Legislature 2007 Regular Session

By Representatives Ross, Ahern, Bailey, Pearson, McDonald and Warnick

Read first time 01/12/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to the penalty for attempting to elude a police
2 vehicle; amending RCW 46.61.024; reenacting and amending RCW 9.94A.533,
3 9.94A.515, 9.94A.411, and 9.94A.525; adding a new section to chapter
4 9.94A RCW; creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 "Guillermo "Bobby" Aguilar and Edgar F. Trevino-Mendoza public safety
8 act of 2007."

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
10 to read as follows:

11 (1) The prosecuting attorney may file a special allegation of
12 endangerment by eluding in every criminal case involving a charge of
13 attempting to elude a police vehicle under RCW 46.61.024, when
14 sufficient admissible evidence exists, to show that a person other than
15 the defendant was threatened with physical injury or harm by the
16 actions of the person committing the crime of attempting to elude a
17 police vehicle.

1 (2) In a criminal case in which there has been a special
2 allegation, the state shall prove beyond a reasonable doubt that the
3 accused committed the crime while endangering a person other than the
4 defendant. The court shall make a finding of fact of whether or not a
5 person other than the defendant was endangered at the time of the
6 commission of the crime, or if a jury trial is had, the jury shall, if
7 it finds the defendant guilty, also find a special verdict as to
8 whether or not a person other than the defendant was endangered during
9 the commission of the crime.

10 **Sec. 3.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are
11 each reenacted and amended to read as follows:

12 (1) The provisions of this section apply to the standard sentence
13 ranges determined by RCW 9.94A.510 or 9.94A.517.

14 (2) For persons convicted of the anticipatory offenses of criminal
15 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
16 standard sentence range is determined by locating the sentencing grid
17 sentence range defined by the appropriate offender score and the
18 seriousness level of the completed crime, and multiplying the range by
19 seventy-five percent.

20 (3) The following additional times shall be added to the standard
21 sentence range for felony crimes committed after July 23, 1995, if the
22 offender or an accomplice was armed with a firearm as defined in RCW
23 9.41.010 and the offender is being sentenced for one of the crimes
24 listed in this subsection as eligible for any firearm enhancements
25 based on the classification of the completed felony crime. If the
26 offender is being sentenced for more than one offense, the firearm
27 enhancement or enhancements must be added to the total period of
28 confinement for all offenses, regardless of which underlying offense is
29 subject to a firearm enhancement. If the offender or an accomplice was
30 armed with a firearm as defined in RCW 9.41.010 and the offender is
31 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
32 commit one of the crimes listed in this subsection as eligible for any
33 firearm enhancements, the following additional times shall be added to
34 the standard sentence range determined under subsection (2) of this
35 section based on the felony crime of conviction as classified under RCW
36 9A.28.020:

1 (a) Five years for any felony defined under any law as a class A
2 felony or with a statutory maximum sentence of at least twenty years,
3 or both, and not covered under (f) of this subsection;

4 (b) Three years for any felony defined under any law as a class B
5 felony or with a statutory maximum sentence of ten years, or both, and
6 not covered under (f) of this subsection;

7 (c) Eighteen months for any felony defined under any law as a class
8 C felony or with a statutory maximum sentence of five years, or both,
9 and not covered under (f) of this subsection;

10 (d) If the offender is being sentenced for any firearm enhancements
11 under (a), (b), and/or (c) of this subsection and the offender has
12 previously been sentenced for any deadly weapon enhancements after July
13 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
14 (4)(a), (b), and/or (c) of this section, or both, all firearm
15 enhancements under this subsection shall be twice the amount of the
16 enhancement listed;

17 (e) Notwithstanding any other provision of law, all firearm
18 enhancements under this section are mandatory, shall be served in total
19 confinement, and shall run consecutively to all other sentencing
20 provisions, including other firearm or deadly weapon enhancements, for
21 all offenses sentenced under this chapter. However, whether or not a
22 mandatory minimum term has expired, an offender serving a sentence
23 under this subsection may be granted an extraordinary medical placement
24 when authorized under RCW 9.94A.728(4);

25 (f) The firearm enhancements in this section shall apply to all
26 felony crimes except the following: Possession of a machine gun,
27 possessing a stolen firearm, drive-by shooting, theft of a firearm,
28 unlawful possession of a firearm in the first and second degree, and
29 use of a machine gun in a felony;

30 (g) If the standard sentence range under this section exceeds the
31 statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a firearm enhancement
34 increases the sentence so that it would exceed the statutory maximum
35 for the offense, the portion of the sentence representing the
36 enhancement may not be reduced.

37 (4) The following additional times shall be added to the standard
38 sentence range for felony crimes committed after July 23, 1995, if the

1 offender or an accomplice was armed with a deadly weapon other than a
2 firearm as defined in RCW 9.41.010 and the offender is being sentenced
3 for one of the crimes listed in this subsection as eligible for any
4 deadly weapon enhancements based on the classification of the completed
5 felony crime. If the offender is being sentenced for more than one
6 offense, the deadly weapon enhancement or enhancements must be added to
7 the total period of confinement for all offenses, regardless of which
8 underlying offense is subject to a deadly weapon enhancement. If the
9 offender or an accomplice was armed with a deadly weapon other than a
10 firearm as defined in RCW 9.41.010 and the offender is being sentenced
11 for an anticipatory offense under chapter 9A.28 RCW to commit one of
12 the crimes listed in this subsection as eligible for any deadly weapon
13 enhancements, the following additional times shall be added to the
14 standard sentence range determined under subsection (2) of this section
15 based on the felony crime of conviction as classified under RCW
16 9A.28.020:

17 (a) Two years for any felony defined under any law as a class A
18 felony or with a statutory maximum sentence of at least twenty years,
19 or both, and not covered under (f) of this subsection;

20 (b) One year for any felony defined under any law as a class B
21 felony or with a statutory maximum sentence of ten years, or both, and
22 not covered under (f) of this subsection;

23 (c) Six months for any felony defined under any law as a class C
24 felony or with a statutory maximum sentence of five years, or both, and
25 not covered under (f) of this subsection;

26 (d) If the offender is being sentenced under (a), (b), and/or (c)
27 of this subsection for any deadly weapon enhancements and the offender
28 has previously been sentenced for any deadly weapon enhancements after
29 July 23, 1995, under (a), (b), and/or (c) of this subsection or
30 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
31 weapon enhancements under this subsection shall be twice the amount of
32 the enhancement listed;

33 (e) Notwithstanding any other provision of law, all deadly weapon
34 enhancements under this section are mandatory, shall be served in total
35 confinement, and shall run consecutively to all other sentencing
36 provisions, including other firearm or deadly weapon enhancements, for
37 all offenses sentenced under this chapter. However, whether or not a

1 mandatory minimum term has expired, an offender serving a sentence
2 under this subsection may be granted an extraordinary medical placement
3 when authorized under RCW 9.94A.728(4);

4 (f) The deadly weapon enhancements in this section shall apply to
5 all felony crimes except the following: Possession of a machine gun,
6 possessing a stolen firearm, drive-by shooting, theft of a firearm,
7 unlawful possession of a firearm in the first and second degree, and
8 use of a machine gun in a felony;

9 (g) If the standard sentence range under this section exceeds the
10 statutory maximum sentence for the offense, the statutory maximum
11 sentence shall be the presumptive sentence unless the offender is a
12 persistent offender. If the addition of a deadly weapon enhancement
13 increases the sentence so that it would exceed the statutory maximum
14 for the offense, the portion of the sentence representing the
15 enhancement may not be reduced.

16 (5) The following additional times shall be added to the standard
17 sentence range if the offender or an accomplice committed the offense
18 while in a county jail or state correctional facility and the offender
19 is being sentenced for one of the crimes listed in this subsection. If
20 the offender or an accomplice committed one of the crimes listed in
21 this subsection while in a county jail or state correctional facility,
22 and the offender is being sentenced for an anticipatory offense under
23 chapter 9A.28 RCW to commit one of the crimes listed in this
24 subsection, the following additional times shall be added to the
25 standard sentence range determined under subsection (2) of this
26 section:

27 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
28 (a) or (b) or 69.50.410;

29 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
30 (c), (d), or (e);

31 (c) Twelve months for offenses committed under RCW 69.50.4013.

32 For the purposes of this subsection, all of the real property of a
33 state correctional facility or county jail shall be deemed to be part
34 of that facility or county jail.

35 (6) An additional twenty-four months shall be added to the standard
36 sentence range for any ranked offense involving a violation of chapter
37 69.50 RCW if the offense was also a violation of RCW 69.50.435 or

1 9.94A.605. All enhancements under this subsection shall run
2 consecutively to all other sentencing provisions, for all offenses
3 sentenced under this chapter.

4 (7) An additional two years shall be added to the standard sentence
5 range for vehicular homicide committed while under the influence of
6 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
7 prior offense as defined in RCW 46.61.5055.

8 (8)(a) The following additional times shall be added to the
9 standard sentence range for felony crimes committed on or after July 1,
10 2006, if the offense was committed with sexual motivation, as that term
11 is defined in RCW 9.94A.030. If the offender is being sentenced for
12 more than one offense, the sexual motivation enhancement must be added
13 to the total period of total confinement for all offenses, regardless
14 of which underlying offense is subject to a sexual motivation
15 enhancement. If the offender committed the offense with sexual
16 motivation and the offender is being sentenced for an anticipatory
17 offense under chapter 9A.28 RCW, the following additional times shall
18 be added to the standard sentence range determined under subsection (2)
19 of this section based on the felony crime of conviction as classified
20 under RCW 9A.28.020:

21 (i) Two years for any felony defined under the law as a class A
22 felony or with a statutory maximum sentence of at least twenty years,
23 or both;

24 (ii) Eighteen months for any felony defined under any law as a
25 class B felony or with a statutory maximum sentence of ten years, or
26 both;

27 (iii) One year for any felony defined under any law as a class C
28 felony or with a statutory maximum sentence of five years, or both;

29 (iv) If the offender is being sentenced for any sexual motivation
30 enhancements under (i), (ii), and/or (iii) of this subsection and the
31 offender has previously been sentenced for any sexual motivation
32 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
33 this subsection, all sexual motivation enhancements under this
34 subsection shall be twice the amount of the enhancement listed;

35 (b) Notwithstanding any other provision of law, all sexual
36 motivation enhancements under this subsection are mandatory, shall be
37 served in total confinement, and shall run consecutively to all other
38 sentencing provisions, including other sexual motivation enhancements,

1 for all offenses sentenced under this chapter. However, whether or not
2 a mandatory minimum term has expired, an offender serving a sentence
3 under this subsection may be granted an extraordinary medical placement
4 when authorized under RCW 9.94A.728(4);

5 (c) The sexual motivation enhancements in this subsection apply to
6 all felony crimes;

7 (d) If the standard sentence range under this subsection exceeds
8 the statutory maximum sentence for the offense, the statutory maximum
9 sentence shall be the presumptive sentence unless the offender is a
10 persistent offender. If the addition of a sexual motivation
11 enhancement increases the sentence so that it would exceed the
12 statutory maximum for the offense, the portion of the sentence
13 representing the enhancement may not be reduced;

14 (e) The portion of the total confinement sentence which the
15 offender must serve under this subsection shall be calculated before
16 any earned early release time is credited to the offender;

17 (f) Nothing in this subsection prevents a sentencing court from
18 imposing a sentence outside the standard sentence range pursuant to RCW
19 9.94A.535.

20 (9) An additional term of total confinement of not less than twelve
21 months and one day or more than twenty-four months shall be added to
22 the standard sentence range for a conviction of attempting to elude a
23 police vehicle as defined by RCW 46.61.024, if the conviction included
24 a finding by special allegation of endangering another person under
25 section 2 of this act. Any enhancement added under this section shall
26 run consecutively to any other sentence or enhancement imposed by the
27 court.

28 **Sec. 4.** RCW 9.94A.515 and 2006 c 277 s 6, 2006 c 228 s 9, 2006 c
29 191 s 2, 2006 c 139 s 2, 2006 c 128 s 3, and 2006 c 73 s 12 are each
30 reenacted and amended to read as follows:

31 TABLE 2
32 CRIMES INCLUDED WITHIN
33 EACH SERIOUSNESS LEVEL
34 XVI Aggravated Murder 1 (RCW
35 10.95.020)

1 XV Homicide by abuse (RCW 9A.32.055)
2 Malicious explosion 1 (RCW
3 70.74.280(1))
4 Murder 1 (RCW 9A.32.030)
5 XIV Murder 2 (RCW 9A.32.050)
6 Trafficking 1 (RCW 9A.40.100(1))
7 XIII Malicious explosion 2 (RCW
8 70.74.280(2))
9 Malicious placement of an explosive 1
10 (RCW 70.74.270(1))
11 XII Assault 1 (RCW 9A.36.011)
12 Assault of a Child 1 (RCW 9A.36.120)
13 Malicious placement of an imitation
14 device 1 (RCW 70.74.272(1)(a))
15 Rape 1 (RCW 9A.44.040)
16 Rape of a Child 1 (RCW 9A.44.073)
17 Trafficking 2 (RCW 9A.40.100(2))
18 XI Manslaughter 1 (RCW 9A.32.060)
19 Rape 2 (RCW 9A.44.050)
20 Rape of a Child 2 (RCW 9A.44.076)
21 X Child Molestation 1 (RCW 9A.44.083)
22 Indecent Liberties (with forcible
23 compulsion) (RCW
24 9A.44.100(1)(a))
25 Kidnapping 1 (RCW 9A.40.020)
26 Leading Organized Crime (RCW
27 9A.82.060(1)(a))
28 Malicious explosion 3 (RCW
29 70.74.280(3))
30 Sexually Violent Predator Escape
31 (RCW 9A.76.115)
32 IX Abandonment of Dependent Person 1
33 (RCW 9A.42.060)
34 Assault of a Child 2 (RCW 9A.36.130)
35 Criminal Mistreatment 1 (RCW
36 9A.42.020)

1 Explosive devices prohibited (RCW
2 70.74.180)
3 Hit and Run--Death (RCW
4 46.52.020(4)(a))
5 Homicide by Watercraft, by being
6 under the influence of intoxicating
7 liquor or any drug (RCW
8 79A.60.050)
9 Inciting Criminal Profiteering (RCW
10 9A.82.060(1)(b))
11 Malicious placement of an explosive 2
12 (RCW 70.74.270(2))
13 Robbery 1 (RCW 9A.56.200)
14 Sexual Exploitation (RCW 9.68A.040)
15 Vehicular Homicide, by being under
16 the influence of intoxicating liquor
17 or any drug (RCW 46.61.520)
18 VIII Arson 1 (RCW 9A.48.020)
19 Homicide by Watercraft, by the
20 operation of any vessel in a
21 reckless manner (RCW
22 79A.60.050)
23 Manslaughter 2 (RCW 9A.32.070)
24 Promoting Prostitution 1 (RCW
25 9A.88.070)
26 Theft of Ammonia (RCW 69.55.010)
27 Vehicular Homicide, by the operation
28 of any vehicle in a reckless manner
29 (RCW 46.61.520)
30 VII Burglary 1 (RCW 9A.52.020)
31 Child Molestation 2 (RCW 9A.44.086)
32 Civil Disorder Training (RCW
33 9A.48.120)
34 Dealing in depictions of minor engaged
35 in sexually explicit conduct (RCW
36 9.68A.050)
37 Drive-by Shooting (RCW 9A.36.045)

1 Homicide by Watercraft, by disregard
2 for the safety of others (RCW
3 79A.60.050)
4 Indecent Liberties (without forcible
5 compulsion) (RCW 9A.44.100(1)
6 (b) and (c))
7 Introducing Contraband 1 (RCW
8 9A.76.140)
9 Malicious placement of an explosive 3
10 (RCW 70.74.270(3))
11 Negligently Causing Death By Use of a
12 Signal Preemption Device (RCW
13 46.37.675)
14 Sending, bringing into state depictions
15 of minor engaged in sexually
16 explicit conduct (RCW 9.68A.060)
17 Unlawful Possession of a Firearm in
18 the first degree (RCW 9.41.040(1))
19 Use of a Machine Gun in Commission
20 of a Felony (RCW 9.41.225)
21 Vehicular Homicide, by disregard for
22 the safety of others (RCW
23 46.61.520)
24 VI Bail Jumping with Murder 1 (RCW
25 9A.76.170(3)(a))
26 Bribery (RCW 9A.68.010)
27 Incest 1 (RCW 9A.64.020(1))
28 Intimidating a Judge (RCW 9A.72.160)
29 Intimidating a Juror/Witness (RCW
30 9A.72.110, 9A.72.130)
31 Malicious placement of an imitation
32 device 2 (RCW 70.74.272(1)(b))
33 Possession of Depictions of a Minor
34 Engaged in Sexually Explicit
35 Conduct (RCW 9.68A.070)
36 Rape of a Child 3 (RCW 9A.44.079)
37 Theft of a Firearm (RCW 9A.56.300)

1 Unlawful Storage of Ammonia (RCW
2 69.55.020)
3 V Abandonment of Dependent Person 2
4 (RCW 9A.42.070)
5 Advancing money or property for
6 extortionate extension of credit
7 (RCW 9A.82.030)
8 Bail Jumping with class A Felony
9 (RCW 9A.76.170(3)(b))
10 Child Molestation 3 (RCW 9A.44.089)
11 Criminal Mistreatment 2 (RCW
12 9A.42.030)
13 Custodial Sexual Misconduct 1 (RCW
14 9A.44.160)
15 Domestic Violence Court Order
16 Violation (RCW 10.99.040,
17 10.99.050, 26.09.300, 26.10.220,
18 26.26.138, 26.50.110, 26.52.070,
19 or 74.34.145)
20 Driving While Under the Influence
21 (RCW 46.61.502(6))
22 Extortion 1 (RCW 9A.56.120)
23 Extortionate Extension of Credit (RCW
24 9A.82.020)
25 Extortionate Means to Collect
26 Extensions of Credit (RCW
27 9A.82.040)
28 Incest 2 (RCW 9A.64.020(2))
29 Kidnapping 2 (RCW 9A.40.030)
30 Perjury 1 (RCW 9A.72.020)
31 Persistent prison misbehavior (RCW
32 9.94.070)
33 Physical Control of a Vehicle While
34 Under the Influence (RCW
35 46.61.504(6))
36 Possession of a Stolen Firearm (RCW
37 9A.56.310)

1 Rape 3 (RCW 9A.44.060)
2 Rendering Criminal Assistance 1
3 (RCW 9A.76.070)
4 Sexual Misconduct with a Minor 1
5 (RCW 9A.44.093)
6 Sexually Violating Human Remains
7 (RCW 9A.44.105)
8 Stalking (RCW 9A.46.110)
9 Taking Motor Vehicle Without
10 Permission 1 (RCW 9A.56.070)
11 IV Arson 2 (RCW 9A.48.030)
12 Assault 2 (RCW 9A.36.021)
13 Assault 3 (of a Peace Officer with a
14 Projectile Stun Gun) (RCW
15 9A.36.031(1)(h))
16 Assault by Watercraft (RCW
17 79A.60.060)
18 Bribing a Witness/Bribe Received by
19 Witness (RCW 9A.72.090,
20 9A.72.100)
21 Cheating 1 (RCW 9A.46.1961)
22 Commercial Bribery (RCW 9A.68.060)
23 Counterfeiting (RCW 9A.16.035(4))
24 Endangerment with a Controlled
25 Substance (RCW 9A.42.100)
26 Escape 1 (RCW 9A.76.110)
27 Hit and Run--Injury (RCW
28 46.52.020(4)(b))
29 Hit and Run with Vessel--Injury
30 Accident (RCW 79A.60.200(3))
31 Identity Theft 1 (RCW 9A.35.020(2))
32 Indecent Exposure to Person Under
33 Age Fourteen (subsequent sex
34 offense) (RCW 9A.88.010)
35 Influencing Outcome of Sporting Event
36 (RCW 9A.82.070)

1 Malicious Harassment (RCW
2 9A.36.080)
3 Residential Burglary (RCW
4 9A.52.025)
5 Robbery 2 (RCW 9A.56.210)
6 Theft of Livestock 1 (RCW 9A.56.080)
7 Threats to Bomb (RCW 9.61.160)
8 Trafficking in Stolen Property 1 (RCW
9 9A.82.050)
10 Unlawful factoring of a credit card or
11 payment card transaction (RCW
12 9A.56.290(4)(b))
13 Unlawful transaction of health
14 coverage as a health care service
15 contractor (RCW 48.44.016(3))
16 Unlawful transaction of health
17 coverage as a health maintenance
18 organization (RCW 48.46.033(3))
19 Unlawful transaction of insurance
20 business (RCW 48.15.023(3))
21 Unlicensed practice as an insurance
22 professional (RCW 48.17.063(3))
23 Use of Proceeds of Criminal
24 Profiteering (RCW 9A.82.080 (1)
25 and (2))
26 Vehicular Assault, by being under the
27 influence of intoxicating liquor or
28 any drug, or by the operation or
29 driving of a vehicle in a reckless
30 manner (RCW 46.61.522)
31 Willful Failure to Return from
32 Furlough (RCW 72.66.060)
33 III Animal Cruelty 1 (Sexual Conduct or
34 Contact) (RCW 16.52.205(3))

1 Assault 3 (Except Assault 3 of a Peace
2 Officer With a Projectile Stun
3 Gun) (RCW 9A.36.031 except
4 subsection (1)(h))
5 Assault of a Child 3 (RCW 9A.36.140)
6 Bail Jumping with class B or C Felony
7 (RCW 9A.76.170(3)(c))
8 Burglary 2 (RCW 9A.52.030)
9 Communication with a Minor for
10 Immoral Purposes (RCW
11 9.68A.090)
12 Criminal Gang Intimidation (RCW
13 9A.46.120)
14 Custodial Assault (RCW 9A.36.100)
15 Cyberstalking (subsequent conviction
16 or threat of death) (RCW
17 9.61.260(3))
18 Endangerment by Eluding (RCW
19 46.61.024(2))
20 Escape 2 (RCW 9A.76.120)
21 Extortion 2 (RCW 9A.56.130)
22 Harassment (RCW 9A.46.020)
23 Intimidating a Public Servant (RCW
24 9A.76.180)
25 Introducing Contraband 2 (RCW
26 9A.76.150)
27 Malicious Injury to Railroad Property
28 (RCW 81.60.070)
29 Negligently Causing Substantial Bodily
30 Harm By Use of a Signal
31 Preemption Device (RCW
32 46.37.674)
33 Organized Retail Theft 1 (RCW
34 9A.56.350(2))
35 Patronizing a Juvenile Prostitute (RCW
36 9.68A.100)
37 Perjury 2 (RCW 9A.72.030)

1 Possession of Incendiary Device (RCW
2 9.40.120)
3 Possession of Machine Gun or Short-
4 Barreled Shotgun or Rifle (RCW
5 9.41.190)
6 Promoting Prostitution 2 (RCW
7 9A.88.080)
8 ~~((Retail))~~ Retail Theft with
9 Extenuating Circumstances 1
10 (RCW 9A.56.360(2))
11 Securities Act violation (RCW
12 21.20.400)
13 Tampering with a Witness (RCW
14 9A.72.120)
15 Telephone Harassment (subsequent
16 conviction or threat of death)
17 (RCW 9.61.230(2))
18 Theft of Livestock 2 (RCW 9A.56.083)
19 Theft with the Intent to Resell 1 (RCW
20 9A.56.340(2))
21 Trafficking in Stolen Property 2 (RCW
22 9A.82.055)
23 Unlawful Imprisonment (RCW
24 9A.40.040)
25 Unlawful possession of firearm in the
26 second degree (RCW 9.41.040(2))
27 Vehicular Assault, by the operation or
28 driving of a vehicle with disregard
29 for the safety of others (RCW
30 46.61.522)
31 Willful Failure to Return from Work
32 Release (RCW 72.65.070)
33 II Computer Trespass 1 (RCW
34 9A.52.110)
35 Counterfeiting (RCW 9.16.035(3))
36 Escape from Community Custody
37 (RCW 72.09.310)

1 Failure to Register as a Sex Offender
2 (second or subsequent offense)
3 (RCW 9A.44.130(10)(a))
4 Health Care False Claims (RCW
5 48.80.030)
6 Identity Theft 2 (RCW 9.35.020(3))
7 Improperly Obtaining Financial
8 Information (RCW 9.35.010)
9 Malicious Mischief 1 (RCW
10 9A.48.070)
11 Organized Retail Theft 2 (RCW
12 9A.56.350(3))
13 Possession of Stolen Property 1 (RCW
14 9A.56.150)
15 (~~(Retail)~~) Retail Theft with
16 Extenuating Circumstances 2
17 (RCW 9A.56.360(3))
18 Theft 1 (RCW 9A.56.030)
19 Theft of Rental, Leased, or Lease-
20 purchased Property (valued at one
21 thousand five hundred dollars or
22 more) (RCW 9A.56.096(5)(a))
23 Theft with the Intent to Resell 2 (RCW
24 9A.56.340(3))
25 Trafficking in Insurance Claims (RCW
26 48.30A.015)
27 Unlawful factoring of a credit card or
28 payment card transaction (RCW
29 9A.56.290(4)(a))
30 Unlawful Practice of Law (RCW
31 2.48.180)
32 Unlicensed Practice of a Profession or
33 Business (RCW 18.130.190(7))
34 Voyeurism (RCW 9A.44.115)
35 I Attempting to Elude a Pursuing Police
36 Vehicle (RCW 46.61.024)

1 False Verification for Welfare (RCW
2 74.08.055)
3 Forgery (RCW 9A.60.020)
4 Fraudulent Creation or Revocation of a
5 Mental Health Advance Directive
6 (RCW 9A.60.060)
7 Malicious Mischief 2 (RCW
8 9A.48.080)
9 Mineral Trespass (RCW 78.44.330)
10 Possession of Stolen Property 2 (RCW
11 9A.56.160)
12 Reckless Burning 1 (RCW 9A.48.040)
13 Taking Motor Vehicle Without
14 Permission 2 (RCW 9A.56.075)
15 Theft 2 (RCW 9A.56.040)
16 Theft of Rental, Leased, or Lease-
17 purchased Property (valued at two
18 hundred fifty dollars or more but
19 less than one thousand five
20 hundred dollars) (RCW
21 9A.56.096(5)(b))
22 Transaction of insurance business
23 beyond the scope of licensure
24 (RCW 48.17.063(4))
25 Unlawful Issuance of Checks or Drafts
26 (RCW 9A.56.060)
27 Unlawful Possession of Fictitious
28 Identification (RCW 9A.56.320)
29 Unlawful Possession of Instruments of
30 Financial Fraud (RCW 9A.56.320)
31 Unlawful Possession of Payment
32 Instruments (RCW 9A.56.320)
33 Unlawful Possession of a Personal
34 Identification Device (RCW
35 9A.56.320)
36 Unlawful Production of Payment
37 Instruments (RCW 9A.56.320)

1 Unlawful Trafficking in Food Stamps
2 (RCW 9.91.142)
3 Unlawful Use of Food Stamps (RCW
4 9.91.144)
5 Vehicle Prowl 1 (RCW 9A.52.095)

6 **Sec. 5.** RCW 9.94A.411 and 2006 c 271 s 1 and 2006 c 73 s 13 are
7 each reenacted and amended to read as follows:

8 (1) Decision not to prosecute.

9 STANDARD: A prosecuting attorney may decline to prosecute, even
10 though technically sufficient evidence to prosecute exists, in
11 situations where prosecution would serve no public purpose, would
12 defeat the underlying purpose of the law in question or would result in
13 decreased respect for the law.

14 GUIDELINE/COMMENTARY:

15 Examples

16 The following are examples of reasons not to prosecute which could
17 satisfy the standard.

18 (a) Contrary to Legislative Intent - It may be proper to decline to
19 charge where the application of criminal sanctions would be clearly
20 contrary to the intent of the legislature in enacting the particular
21 statute.

22 (b) Antiquated Statute - It may be proper to decline to charge
23 where the statute in question is antiquated in that:

24 (i) It has not been enforced for many years; and

25 (ii) Most members of society act as if it were no longer in
26 existence; and

27 (iii) It serves no deterrent or protective purpose in today's
28 society; and

29 (iv) The statute has not been recently reconsidered by the
30 legislature.

31 This reason is not to be construed as the basis for declining cases
32 because the law in question is unpopular or because it is difficult to
33 enforce.

34 (c) De Minimis Violation - It may be proper to decline to charge
35 where the violation of law is only technical or insubstantial and where
36 no public interest or deterrent purpose would be served by prosecution.

1 (d) Confinement on Other Charges - It may be proper to decline to
2 charge because the accused has been sentenced on another charge to a
3 lengthy period of confinement; and

4 (i) Conviction of the new offense would not merit any additional
5 direct or collateral punishment;

6 (ii) The new offense is either a misdemeanor or a felony which is
7 not particularly aggravated; and

8 (iii) Conviction of the new offense would not serve any significant
9 deterrent purpose.

10 (e) Pending Conviction on Another Charge - It may be proper to
11 decline to charge because the accused is facing a pending prosecution
12 in the same or another county; and

13 (i) Conviction of the new offense would not merit any additional
14 direct or collateral punishment;

15 (ii) Conviction in the pending prosecution is imminent;

16 (iii) The new offense is either a misdemeanor or a felony which is
17 not particularly aggravated; and

18 (iv) Conviction of the new offense would not serve any significant
19 deterrent purpose.

20 (f) High Disproportionate Cost of Prosecution - It may be proper to
21 decline to charge where the cost of locating or transporting, or the
22 burden on, prosecution witnesses is highly disproportionate to the
23 importance of prosecuting the offense in question. This reason should
24 be limited to minor cases and should not be relied upon in serious
25 cases.

26 (g) Improper Motives of Complainant - It may be proper to decline
27 charges because the motives of the complainant are improper and
28 prosecution would serve no public purpose, would defeat the underlying
29 purpose of the law in question or would result in decreased respect for
30 the law.

31 (h) Immunity - It may be proper to decline to charge where immunity
32 is to be given to an accused in order to prosecute another where the
33 accused's information or testimony will reasonably lead to the
34 conviction of others who are responsible for more serious criminal
35 conduct or who represent a greater danger to the public interest.

36 (i) Victim Request - It may be proper to decline to charge because
37 the victim requests that no criminal charges be filed and the case
38 involves the following crimes or situations:

1 (i) Assault cases where the victim has suffered little or no
2 injury;

3 (ii) Crimes against property, not involving violence, where no
4 major loss was suffered;

5 (iii) Where doing so would not jeopardize the safety of society.

6 Care should be taken to insure that the victim's request is freely
7 made and is not the product of threats or pressure by the accused.

8 The presence of these factors may also justify the decision to
9 dismiss a prosecution which has been commenced.

10 Notification

11 The prosecutor is encouraged to notify the victim, when practical,
12 and the law enforcement personnel, of the decision not to prosecute.

13 (2) Decision to prosecute.

14 (a) STANDARD:

15 Crimes against persons will be filed if sufficient admissible
16 evidence exists, which, when considered with the most plausible,
17 reasonably foreseeable defense that could be raised under the evidence,
18 would justify conviction by a reasonable and objective fact-finder.
19 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
20 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
21 9A.64.020 the prosecutor should avoid pre-filing agreements or
22 diversions intended to place the accused in a program of treatment or
23 counseling, so that treatment, if determined to be beneficial, can be
24 provided pursuant to RCW 9.94A.670.

25 Crimes against property/other crimes will be filed if the
26 admissible evidence is of such convincing force as to make it probable
27 that a reasonable and objective fact-finder would convict after hearing
28 all the admissible evidence and the most plausible defense that could
29 be raised.

30 See table below for the crimes within these categories.

31 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

- 32 CRIMES AGAINST PERSONS
- 33 Aggravated Murder
- 34 1st Degree Murder
- 35 2nd Degree Murder
- 36 1st Degree Manslaughter
- 37 2nd Degree Manslaughter
- 38 1st Degree Kidnapping

1 2nd Degree Kidnapping
2 1st Degree Assault
3 2nd Degree Assault
4 3rd Degree Assault
5 1st Degree Assault of a Child
6 2nd Degree Assault of a Child
7 3rd Degree Assault of a Child
8 1st Degree Rape
9 2nd Degree Rape
10 3rd Degree Rape
11 1st Degree Rape of a Child
12 2nd Degree Rape of a Child
13 3rd Degree Rape of a Child
14 1st Degree Robbery
15 2nd Degree Robbery
16 1st Degree Arson
17 1st Degree Burglary
18 1st Degree Identity Theft
19 2nd Degree Identity Theft
20 1st Degree Extortion
21 2nd Degree Extortion
22 Indecent Liberties
23 Incest
24 Vehicular Homicide
25 Vehicular Assault
26 1st Degree Child Molestation
27 2nd Degree Child Molestation
28 3rd Degree Child Molestation
29 1st Degree Promoting Prostitution
30 Intimidating a Juror
31 Communication with a Minor
32 Intimidating a Witness
33 Intimidating a Public Servant
34 Bomb Threat (if against person)
35 Unlawful Imprisonment
36 Promoting a Suicide Attempt
37 Riot (if against person)
38 Stalking

1 Custodial Assault
2 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
3 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
4 Counterfeiting (if a violation of RCW 9.16.035(4))
5 Endangerment by Eluding
6 Felony Driving a Motor Vehicle While Under the Influence of
7 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
8 Felony Physical Control of a Motor Vehicle While Under the
9 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))
10 CRIMES AGAINST PROPERTY/OTHER CRIMES
11 2nd Degree Arson
12 1st Degree Escape
13 2nd Degree Escape
14 2nd Degree Burglary
15 1st Degree Theft
16 2nd Degree Theft
17 1st Degree Perjury
18 2nd Degree Perjury
19 1st Degree Introducing Contraband
20 2nd Degree Introducing Contraband
21 1st Degree Possession of Stolen Property
22 2nd Degree Possession of Stolen Property
23 Bribery
24 Bribing a Witness
25 Bribe received by a Witness
26 Bomb Threat (if against property)
27 1st Degree Malicious Mischief
28 2nd Degree Malicious Mischief
29 1st Degree Reckless Burning
30 Taking a Motor Vehicle without Authorization
31 Forgery
32 2nd Degree Promoting Prostitution
33 Tampering with a Witness
34 Trading in Public Office
35 Trading in Special Influence
36 Receiving/Granting Unlawful Compensation
37 Bigamy
38 Eluding a Pursuing Police Vehicle

1 Willful Failure to Return from Furlough

2 Escape from Community Custody

3 Riot (if against property)

4 1st Degree Theft of Livestock

5 2nd Degree Theft of Livestock

6 ALL OTHER UNCLASSIFIED FELONIES

7 Selection of Charges/Degree of Charge

8 (i) The prosecutor should file charges which adequately describe
9 the nature of defendant's conduct. Other offenses may be charged only
10 if they are necessary to ensure that the charges:

11 (A) Will significantly enhance the strength of the state's case at
12 trial; or

13 (B) Will result in restitution to all victims.

14 (ii) The prosecutor should not overcharge to obtain a guilty plea.

15 Overcharging includes:

16 (A) Charging a higher degree;

17 (B) Charging additional counts.

18 This standard is intended to direct prosecutors to charge those
19 crimes which demonstrate the nature and seriousness of a defendant's
20 criminal conduct, but to decline to charge crimes which are not
21 necessary to such an indication. Crimes which do not merge as a matter
22 of law, but which arise from the same course of conduct, do not all
23 have to be charged.

24 (b) GUIDELINES/COMMENTARY:

25 (i) Police Investigation

26 A prosecuting attorney is dependent upon law enforcement agencies
27 to conduct the necessary factual investigation which must precede the
28 decision to prosecute. The prosecuting attorney shall ensure that a
29 thorough factual investigation has been conducted before a decision to
30 prosecute is made. In ordinary circumstances the investigation should
31 include the following:

32 (A) The interviewing of all material witnesses, together with the
33 obtaining of written statements whenever possible;

34 (B) The completion of necessary laboratory tests; and

35 (C) The obtaining, in accordance with constitutional requirements,
36 of the suspect's version of the events.

37 If the initial investigation is incomplete, a prosecuting attorney

1 should insist upon further investigation before a decision to prosecute
2 is made, and specify what the investigation needs to include.

3 (ii) Exceptions

4 In certain situations, a prosecuting attorney may authorize filing
5 of a criminal complaint before the investigation is complete if:

6 (A) Probable cause exists to believe the suspect is guilty; and

7 (B) The suspect presents a danger to the community or is likely to
8 flee if not apprehended; or

9 (C) The arrest of the suspect is necessary to complete the
10 investigation of the crime.

11 In the event that the exception to the standard is applied, the
12 prosecuting attorney shall obtain a commitment from the law enforcement
13 agency involved to complete the investigation in a timely manner. If
14 the subsequent investigation does not produce sufficient evidence to
15 meet the normal charging standard, the complaint should be dismissed.

16 (iii) Investigation Techniques

17 The prosecutor should be fully advised of the investigatory
18 techniques that were used in the case investigation including:

19 (A) Polygraph testing;

20 (B) Hypnosis;

21 (C) Electronic surveillance;

22 (D) Use of informants.

23 (iv) Pre-Filing Discussions with Defendant

24 Discussions with the defendant or his/her representative regarding
25 the selection or disposition of charges may occur prior to the filing
26 of charges, and potential agreements can be reached.

27 (v) Pre-Filing Discussions with Victim(s)

28 Discussions with the victim(s) or victims' representatives
29 regarding the selection or disposition of charges may occur before the
30 filing of charges. The discussions may be considered by the prosecutor
31 in charging and disposition decisions, and should be considered before
32 reaching any agreement with the defendant regarding these decisions.

33 **Sec. 6.** RCW 46.61.024 and 2003 c 101 s 1 are each amended to read
34 as follows:

35 (1) Any driver of a motor vehicle who willfully fails or refuses to
36 immediately bring his vehicle to a stop and who drives his vehicle in
37 a reckless manner while attempting to elude a pursuing police vehicle,

1 after being given a visual or audible signal to bring the vehicle to a
2 stop, shall be guilty of a class C felony. The signal given by the
3 police officer may be by hand, voice, emergency light, or siren. The
4 officer giving such a signal shall be in uniform and the vehicle shall
5 be equipped with lights and sirens.

6 (2) Any driver of a motor vehicle who is convicted of attempting to
7 elude a police vehicle under subsection (1) of this section, if the
8 conviction included a finding by special allegation of endangering
9 another person under section 1 of this act, is guilty of a class B
10 felony.

11 (3) It is an affirmative defense to this section which must be
12 established by a preponderance of the evidence that: (a) A reasonable
13 person would not believe that the signal to stop was given by a police
14 officer; and (b) driving after the signal to stop was reasonable under
15 the circumstances.

16 ~~((3))~~ (4) The license or permit to drive or any nonresident
17 driving privilege of a person convicted of a violation of this section
18 shall be revoked by the department of licensing.

19 **Sec. 7.** RCW 9.94A.525 and 2006 c 128 s 6 and 2006 c 73 s 7 are
20 each reenacted and amended to read as follows:

21 The offender score is measured on the horizontal axis of the
22 sentencing grid. The offender score rules are as follows:

23 The offender score is the sum of points accrued under this section
24 rounded down to the nearest whole number.

25 (1) A prior conviction is a conviction which exists before the date
26 of sentencing for the offense for which the offender score is being
27 computed. Convictions entered or sentenced on the same date as the
28 conviction for which the offender score is being computed shall be
29 deemed "other current offenses" within the meaning of RCW 9.94A.589.

30 (2)(a) Class A and sex prior felony convictions shall always be
31 included in the offender score.

32 (b) Class B prior felony convictions other than sex offenses shall
33 not be included in the offender score, if since the last date of
34 release from confinement (including full-time residential treatment)
35 pursuant to a felony conviction, if any, or entry of judgment and
36 sentence, the offender had spent ten consecutive years in the community
37 without committing any crime that subsequently results in a conviction.

1 (c) Except as provided in (e) of this subsection, class C prior
2 felony convictions other than sex offenses shall not be included in the
3 offender score if, since the last date of release from confinement
4 (including full-time residential treatment) pursuant to a felony
5 conviction, if any, or entry of judgment and sentence, the offender had
6 spent five consecutive years in the community without committing any
7 crime that subsequently results in a conviction.

8 (d) Except as provided in (e) of this subsection, serious traffic
9 convictions shall not be included in the offender score if, since the
10 last date of release from confinement (including full-time residential
11 treatment) pursuant to a felony conviction, if any, or entry of
12 judgment and sentence, the offender spent five years in the community
13 without committing any crime that subsequently results in a conviction.

14 (e) If the present conviction is felony driving while under the
15 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
16 felony physical control of a vehicle while under the influence of
17 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
18 of felony driving while under the influence of intoxicating liquor or
19 any drug, felony physical control of a vehicle while under the
20 influence of intoxicating liquor or any drug, and serious traffic
21 offenses shall be included in the offender score if: (i) The prior
22 convictions were committed within five years since the last date of
23 release from confinement (including full-time residential treatment) or
24 entry of judgment and sentence; or (ii) the prior convictions would be
25 considered "prior offenses within ten years" as defined in RCW
26 46.61.5055.

27 (f) This subsection applies to both adult and juvenile prior
28 convictions.

29 (3) Out-of-state convictions for offenses shall be classified
30 according to the comparable offense definitions and sentences provided
31 by Washington law. Federal convictions for offenses shall be
32 classified according to the comparable offense definitions and
33 sentences provided by Washington law. If there is no clearly
34 comparable offense under Washington law or the offense is one that is
35 usually considered subject to exclusive federal jurisdiction, the
36 offense shall be scored as a class C felony equivalent if it was a
37 felony under the relevant federal statute.

1 (4) Score prior convictions for felony anticipatory offenses
2 (attempts, criminal solicitations, and criminal conspiracies) the same
3 as if they were convictions for completed offenses.

4 (5)(a) In the case of multiple prior convictions, for the purpose
5 of computing the offender score, count all convictions separately,
6 except:

7 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
8 encompass the same criminal conduct, shall be counted as one offense,
9 the offense that yields the highest offender score. The current
10 sentencing court shall determine with respect to other prior adult
11 offenses for which sentences were served concurrently or prior juvenile
12 offenses for which sentences were served consecutively, whether those
13 offenses shall be counted as one offense or as separate offenses using
14 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
15 if the court finds that they shall be counted as one offense, then the
16 offense that yields the highest offender score shall be used. The
17 current sentencing court may presume that such other prior offenses
18 were not the same criminal conduct from sentences imposed on separate
19 dates, or in separate counties or jurisdictions, or in separate
20 complaints, indictments, or informations;

21 (ii) In the case of multiple prior convictions for offenses
22 committed before July 1, 1986, for the purpose of computing the
23 offender score, count all adult convictions served concurrently as one
24 offense, and count all juvenile convictions entered on the same date as
25 one offense. Use the conviction for the offense that yields the
26 highest offender score.

27 (b) As used in this subsection (5), "served concurrently" means
28 that: (i) The latter sentence was imposed with specific reference to
29 the former; (ii) the concurrent relationship of the sentences was
30 judicially imposed; and (iii) the concurrent timing of the sentences
31 was not the result of a probation or parole revocation on the former
32 offense.

33 (6) If the present conviction is one of the anticipatory offenses
34 of criminal attempt, solicitation, or conspiracy, count each prior
35 conviction as if the present conviction were for a completed offense.
36 When these convictions are used as criminal history, score them the
37 same as a completed crime.

1 (7) If the present conviction is for a nonviolent offense and not
2 covered by subsection (11) or (12) of this section, count one point for
3 each adult prior felony conviction and one point for each juvenile
4 prior violent felony conviction and 1/2 point for each juvenile prior
5 nonviolent felony conviction.

6 (8) If the present conviction is for a violent offense and not
7 covered in subsection (9), (10), (11), or (12) of this section, count
8 two points for each prior adult and juvenile violent felony conviction,
9 one point for each prior adult nonviolent felony conviction, and 1/2
10 point for each prior juvenile nonviolent felony conviction.

11 (9) If the present conviction is for a serious violent offense,
12 count three points for prior adult and juvenile convictions for crimes
13 in this category, two points for each prior adult and juvenile violent
14 conviction (not already counted), one point for each prior adult
15 nonviolent felony conviction, and 1/2 point for each prior juvenile
16 nonviolent felony conviction.

17 (10) If the present conviction is for Burglary 1, count prior
18 convictions as in subsection (8) of this section; however count two
19 points for each prior adult Burglary 2 or residential burglary
20 conviction, and one point for each prior juvenile Burglary 2 or
21 residential burglary conviction.

22 (11) If the present conviction is for a felony traffic offense
23 count two points for each adult or juvenile prior conviction for
24 Vehicular Homicide or Vehicular Assault; for each felony offense count
25 one point for each adult and 1/2 point for each juvenile prior
26 conviction; for each serious traffic offense, other than those used for
27 an enhancement pursuant to RCW 46.61.520(2), count one point for each
28 adult and 1/2 point for each juvenile prior conviction.

29 (12) If the present conviction is for manufacture of
30 methamphetamine count three points for each adult prior manufacture of
31 methamphetamine conviction and two points for each juvenile manufacture
32 of methamphetamine offense. If the present conviction is for a drug
33 offense and the offender has a criminal history that includes a sex
34 offense or serious violent offense, count three points for each adult
35 prior felony drug offense conviction and two points for each juvenile
36 drug offense. All other adult and juvenile felonies are scored as in
37 subsection (8) of this section if the current drug offense is violent,

1 or as in subsection (7) of this section if the current drug offense is
2 nonviolent.

3 (13) If the present conviction is for Escape from Community
4 Custody, RCW 72.09.310, count only prior escape convictions in the
5 offender score. Count adult prior escape convictions as one point and
6 juvenile prior escape convictions as 1/2 point.

7 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
8 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
9 juvenile prior convictions as 1/2 point.

10 (15) If the present conviction is for Burglary 2 or residential
11 burglary, count priors as in subsection (7) of this section; however,
12 count two points for each adult and juvenile prior Burglary 1
13 conviction, two points for each adult prior Burglary 2 or residential
14 burglary conviction, and one point for each juvenile prior Burglary 2
15 or residential burglary conviction.

16 (16) If the present conviction is for a sex offense, count priors
17 as in subsections (7) through (15) of this section; however count three
18 points for each adult and juvenile prior sex offense conviction.

19 (17) If the present conviction is for failure to register as a sex
20 offender under RCW 9A.44.130(10), count priors as in subsections (7)
21 through (15) of this section; however count three points for each adult
22 and juvenile prior sex offense conviction, excluding prior convictions
23 for failure to register as a sex offender under RCW 9A.44.130(10),
24 which shall count as one point.

25 (18) If the present conviction is for an offense committed while
26 the offender was under community placement, add one point.

27 (19) If the present conviction is for Endangerment by Eluding under
28 RCW 46.61.024(2) count two points for each adult and juvenile prior
29 conviction for Attempting to Elude a Police Vehicle or Endangerment by
30 Eluding, Theft 1 or 2 (of a motor vehicle), Possession of Stolen
31 Property 1 or 2 (of a motor vehicle), or Taking a Motor Vehicle without
32 Permission 1 or 2 conviction.

33 (20) The fact that a prior conviction was not included in an
34 offender's offender score or criminal history at a previous sentencing
35 shall have no bearing on whether it is included in the criminal history
36 or offender score for the current offense. Accordingly, prior
37 convictions that were not counted in the offender score or included in
38 criminal history under repealed or previous versions of the sentencing

1 reform act shall be included in criminal history and shall count in the
2 offender score if the current version of the sentencing reform act
3 requires including or counting those convictions.

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